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CONTENTS

EDITORIAL: AUTOMATIC REVIEW	1
NOTES ON CASES	
The <i>actio de pastu</i> – <i>Heron v. Skinner</i>	3
Cheques crossed "a/c payee only" – <i>Rhostar (Pvt.) Ltd. v. Netherlands Bank of Rhodesia, Ltd.</i>	9
Contracts signed in blank – <i>National and Grindlays Bank, Ltd. v. Yelverton.</i>	12
Plaintiff's negligence as a bar to the <i>condictio indebiti</i> – <i>Calder v. South African Mutual Life Assurance Society</i>	15
Option of imprisonment or option of fine? – <i>S. v. Manwere</i>	17
Enrichment when work incomplete – <i>Grizzell v. P. and W. Erection Co. (Pvt.) Ltd.</i>	21
ARTICLES	
NON-ACADEMIC QUALITIES OF LAWYERS, by The Hon. Mr Justice H.N. MacDonald	25
THE MEANING OF "OCCUPATION" IN THE LAND TENURE ACT AND SIMILAR LEGISLATION, by J. Reid Rowland	31
DEVIANC E IN RHODESIAN SOCIETY: THE IMPACT OF EUROPEAN VALUES ON AFRICAN CULTURE AS A CAUSE OF CRIME, by C.S. Cant and E.L. Masina	47
POLICE NOTES	55
REPORTS	
<i>Granlund v. Greendale Town Council</i> (T.P.)	62
<i>Eustratiou v. Bozzone and Maglio</i> (T.P.)	66
<i>Staffin Estates (Pvt.) Ltd. v. Minister of Local Government and Housing</i> (T.P.)	69
REVIEWS	
<i>The English Legal System</i> , by R.J. Walker and M.G. Walker	75
<i>Maasdorp's Institutes of South African Law, Volume IV: The Law of Delicts and the Dissolution of Obligations</i> , 8th ed., by C.G. Hall	76
<i>Labour and the Law</i> , by Otto Kahn Freund	78
<i>Maasdorp's Institutes of South African Law, Vol. II: The Law of Property</i> , 9th ed., by C.G. Hall	82
<i>The Machinery of Justice in England</i> , 6th ed., by R.M. Jackson	84
<i>The South African Law of Domicile of Natural Persons</i> , by Ellison Kahn	86

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DEVIANCE IN RHODESIAN SOCIETY: THE IMPACT OF EUROPEAN VALUES ON AFRICAN CULTURE AS A CAUSE OF CRIME

by C.S. CANT, B.L.(Rhod.) and E.L. MASINA, B.L.(Rhod.)

The authors wrote this introductory study during their final year course on criminology at the University of Rhodesia. They draw attention to one of the major difficulties of administering the criminal law in Rhodesia - the fact that conduct which is regarded as deviant by Europeans is not always so regarded by Africans.

Examples are given, pointing to the applicability of some of the research that has been done in other countries. Similar research is required in this country, but in the meantime much can be achieved by compromise and understanding.

Rhodesia is a multi-cultural multi-racial society, and the problems which the concept of deviance is likely to present in this situation must be considered. The first requisite is to define "deviance". Dinitz, Dynes and Clarke¹ suggest that deviance be considered as behaviour that represents some form of undesirable difference. It can be defined as the failure to obey "norms" which are the accepted rules of any group. Deviance is an aspect of ordinary human behaviour and only becomes criminal if it goes beyond the social limit of tolerance. There are no absolute standards and the concept changes and differs between and within societies.

In a homogeneous or one-cultural society, there is no difficulty in the identification of the norms; everyone shares the same basic values so there will be general agreement as to what constitutes deviance. "The situation is quite different in modern societies. The normative order becomes more and more complex since there is greater diversity within the society itself"²

Most modern societies are multi-cultural, and different cultures hold different values. Howard S. Becker³ expresses the problem of definition which must occur: "A person may break the rules of one group by the very act of abiding by the rules of another group. Is he, then, deviant?". In any given society at any given time, the law-making machinery will be dominated by one particular social class.⁴

Norms will be defined according to the norms of the social group hold-

1. *Deviance: Studies in the Process of Stigmatization and Societal Reaction* (1969 ed.) p.12.

2. Dinitz, Dynes and Clarke, *Deviance*, p.5.

3. *Outsiders: Studies in the Sociology of Deviance* (1963 ed.), p.8.

4. A.V. Dicey, *Law and Public Opinion in England* (2nd ed.), p.13.

ing political and economic power, and it is their norms which will be enforced by law. "Not only are the older and generally accepted 'mores' which punish such offences as murder, rape and robbery perpetuated in the criminal code, but a host of new laws spring up which seek to define new areas of behaviour where conduct is impinging on the values held by the group in dominant political authority".⁵

The obvious consequence is that those subjected to norms to which they do not subscribe will not willingly obey them. Such people are liable to form sub-cultures which oppose the imposed norms.

We can expect even greater problems in regard to deviance in Rhodesia's plural society, which is divided into groups not only by social class, but also by ethnic and cultural distinctions. "Insofar as the rules of various groups conflict and contradict one another, there will be disagreement about the kind of behaviour that is proper in any given situation."⁶ We must assess how far traditional African values differ from the values of contemporary European society. The distinction is essentially that between primitive, tribal, rural society and modern, industrial, urbanised society. Norms in a traditional society are generally simple and integrated. There is widespread agreement on moral values and these comprise the unwritten criminal code of the tribe. On the other hand, norms in a modern society are complex and lack integration. Before the advent of the European, African society was at a fairly primitive stage. As a result, laws were comparatively simple and were understood and accepted by the members of the tribe. There was no need for the multitude of "mala prohibita" rules found in modern societies, and if any norms were broken, this was regarded as deviance. The person's whole personality was judged and he was not necessarily stigmatised as deviant, merely because he had committed a single deviant act. This is in contrast to modern society where a single deviant act can cause society to re-define the offender as a deviant instead of interpreting his action in the light of his past behaviour.

African society was much less individualistic than European, and the family and tribal units were more important. Property was held communally and each family was granted an area for its own use by the Chief. The concept of individual ownership of land is still not acceptable to quite a number of the African population. So, poaching on a neighbour's property is done with a free conscience. Similarly, there is a resentment in the peri-urban townships when the municipality penalises people for growing maize and other crops in "fields" around the township. It simply has not registered in the minds of many Africans that the municipality, as owner, is entitled to charge for the use of its land.

5. Richard C. Fuller, "Morals and the Criminal Law" in Cressey and Ward, *Delinquency, Crime and Social Process* (1969 ed.), p.82.

6. Howard S. Becker, *Outsiders: Studies in the Sociology of Deviance* (1963 ed.), p.15.

African customary law is well developed in the sphere of family relations and the norms are very different from western ideas. Kinship was seen as more important and more extensive. Marriage was potentially polygamous and based on a transaction between the families, whereas European marriage is monogamous and based on agreement between the parties. The idea of "lobola" (marriage consideration) was of fundamental importance as regards the marriage, divorce and guardianship of the children. The customary law conception of succession was based on primogeniture among males. African customary criminal law resembled our delict and involved compensation for the individual and sometimes payments to the Chief. What was aimed at was compensation and reconciliation and not punishment. So, when a man stole another's goat, he had to return it or its equivalent or possibly more as a penalty, in addition to apologies, and that would be the end of the matter. What happens now? This sort of deviance is exaggerated by making the offence criminal. The offender is submitted to the criminal process and this can lead to criminalisation. The aggrieved party is not compensated and is left nursing a grudge against the offender and often also against the system which no longer allows him to compound. He may feel justified in taking the law into his own hands in future, should a similar situation arise. Thus one of the traditional means of maintaining a social harmony is destroyed. It is evident from the foregoing that African traditional norms differ in many respects from those of the European.

The Europeans in Rhodesia are the dominant political legislative and economic group, and it is essentially their norms which are upheld by the law. The Africans, however, form the numerical majority, and the situation is, in effect, that of a dominant sub-culture imposing its values on the community. Leslie T. Wilkins⁷ comments: "A ruling minority or powerful group may, for a time, be able to persuade the majority to permit the definitions to remain unamended because they reflect some idealised behaviour patterns to which the majority tend to subscribe." It is important to ascertain how far the African majority do subscribe to the legal definition of deviance because Wilkins adds (p.50) that: "...the divergence between 'democratic' definitions and 'legal' definitions cannot be maintained at too great a distance for too long." Has the European given adequate recognition to the Africans' norms? Does he know them in the first place, and if so, what is his attitude towards them? Have European norms been accepted by the Africans, and if so, to what extent?

Richard C. Fuller⁸ points out that if criminal definitions are to

7. L.T. Wilkins, *Social Deviance: Social Policy, Action and Research* (1964 ed.), p.49.

8. R.C. Fuller, "Morals and the Criminal Law", in Cressey and Ward, *Delinquency, Crime and Social Process* (1969 ed.), p.85.

become incorporated into our central core of moral sanctions, the community as a whole must be won over to their support. This was wisely recognised in the statement in the Royal Charter of the B.S.A. Company - that in the administration of justice, regard must be had to the customs and laws of the class, tribe or nation to which the parties belong, especially with regard to property, succession and family matters. Section 70 of the 1969 Constitution of Rhodesia lays down that our courts shall administer common law and legislation subject to customary laws. Various statutes make provision for the application of customary law, in particular the African Law and Tribal Courts Act, 1969. Under this Act, in civil cases between Africans, customary law is to be applied in certain fields relating to family, succession and property unless the customary rule is held to be repugnant to natural justice or morality or to the provisions of any enactment. Immediately it is evident that where there is a fundamental disagreement between definitions of deviance, the European definition is enforced. It is submitted in this regard that what offends the principles of natural justice in the European sense need not necessarily do so from the African's point of view. Furthermore, in all other matters, the ordinary common law of Rhodesia is to be applied.

Even in the sphere in which customary law is applied, such as marriage, certain changes have been made. African law is not recognised at all in criminal matters, and the sort of problems which can arise are shown by the case of *Rex v. Ncube*, 1959 R. & N. 466. Under African customary law, polyandry is not permitted, although polygamy is allowed. Both are regarded as bigamy in our law, but for an African to be charged with bigamy one of the marriages must have been civil. In this case the accused was charged with bigamy for marrying two men by customary law. She was acquitted as there had been no civil marriage, and the fact that she had committed a crime by customary law was held to be irrelevant. In the spheres in which it is applied, customary law is having to adapt to modern conditions. Under customary law, for example, women were treated as minors under the guardianship of their husbands, but their emancipation has to be recognised where, for instance, they become traders. In other spheres, the application of customary law can lead to injustice due to the change in conditions. For example, under the customary law of succession, husbands and wives do not inherit from each other. This worked when the whole system was intact, but can lead to hardship for urbanised wives who are separated from their families. Finally, in many cases, customary law is simply not equipped to deal with modern life, even in the tribal trust lands, since it did not have to develop rules regulating such items as trading ventures and transport businesses. Therefore it can be seen that, in many cases, Africans are subject to European laws which differ from traditional African norms.

Explanations of deviance in this situation are not difficult to find. Durkheim⁹ discovered that in periods of social change a condition of weakened cultural regulation of behaviour sets in. Old regulating standards become obsolete, restraints dissolve, and social solidarity weakens. This leads to a state of social norm confusion, and deviance and crime increases. The evolution of primitive African society to meet contemporary conditions has been so swift as to be termed a social revolution. There has been a widespread migration of Africans from a rural to an urban environment. How does the migrant adapt to the new situation? Sellin¹⁰ has shown that in America, over-rapid Americanisation of immigrants is, in many cases, a cause of crime. When there is a rapid disintegration of the immigrant's norms, a state of cultural vacuum or cultural chaos occurs. The migrant is not ready to absorb the norms of the established group. The problem is aggravated if the receiving culture offers no clear guidance to the prospective adaptor and scoffs at his mistakes. Only slow and gradual absorption of the receiving culture and the step-by-step replacement of the original norms can avert a culture-clash and create a synthesis enhancing the observance of acquired norms.

Merton¹¹ held that modern society tends to overemphasise specific goals and neglect institutional procedures for their achievement, with the result that people strive for the goals by deviant means. The implications of this theory are very relevant to the situation in Rhodesia. Traditional tribal values do not equip African migrants to deal with the complete change in their life style. Western society stresses materialistic goals but acceptable means of achieving these are not included in the African's traditional set of values. In the traditional setting each member of the tribe had a definite status, but in our society achievement replaces ascription. Some of the goals held out by industrial societies are attainable only by a minority of the population, and this is particularly so where laws and prejudices prevent one race from attaining certain goals. Frustration is likely to result and deviant means may be adopted. In most cases the migrant does not have the training to satisfy his aspirations. What is more, he does not know that this is necessary. He feels wronged when he is told that he does not "qualify". The period of adjustment is one of cultural chaos and the African who attempts to replace his tribal values with those of the European will certainly undergo a period of confusion.

9. Durkheim, *Suicide: A Study in Sociology* (1968 ed., tr. Spaulding and Simpson), pp. 241-76.

10. Sellin, "The Conflict of Conduct Norms" in Wolfgang, Savitz and Johnston, *The Sociology of Crime and Delinquency* (2nd ed.), pp. 186-9.

11. Merton, *Social Theory and Social Structure* (enlarged ed.), p.190.

In the urban set-up the values of the European are the standard, and during the period of adjustment, the newcomer makes a number of mistakes which the law will not tolerate. Africans in the tribal trust lands, on seeing their prosperous friends and relatives during weekend and holiday visits feel that they are lagging behind and rush to the towns in order to catch up. The urban environment is impersonal - "every man for himself". Specifically the African extended family has no place. As a result, the migrant is likely to find himself picked up by the police as an illegal lodger, a vagrant or a disorderly person for staying with his relatives. The migrant cannot understand why he is arrested for staying at his brother's house since this would be natural in the tribal trust lands. The brother tells him it is a European law, which comes as a shock to the migrant. On prosecution he learns that ignorance of the law is no defence. This too is something new.

New European values must be learned and this can lead to norm confusion. This is particularly so where the African does not fully appreciate the nature of the European concept. An instance of this lies in the field of contract. Contractual rules flow from a rich commercial life. This did not exist in African society, so there was no need for contractual formality. The spirit behind a contract is mutual confidence - a compulsion, so to speak, in the name of good faith to respect the other party's right and thus an obligation duly to perform one's contractual duties. It is not suggested that the African does not have this spirit. However, one cannot help suspecting its adequacy with particular reference to the massive credit business between Africans and Europeans, where not infrequently, goods are re-possessed, and occasionally Africans are jailed for failure to meet their obligations. It seems that failure to pay may be attributable to something more than mere financial inability to do so. It is submitted that the commercial conscience has not yet fully crystallised in the African mind.

Many practices which are traditionally acceptable to the African are labelled deviant or criminal in our law. If an African does not subscribe to an imposed norm, he will be reluctant to obey it. An instance of this is the smoking of dagga, which the rural African does not regard to be deviant in certain groups, generally the aged members of the tribe. Where the new values clash with previous values, norm conflicts arise, and the result is that the holding power of both sets or norms will be weakened. The urbanised African will have to revert, to some degree, to the traditional norms whenever he returns to the kraal. In this connection, it should be noted that the frequent weekend holiday visits to the tribal lands indicate a feeling of not really belonging to the urban environment. However, on returning to the tribal trust lands, the urbanised African discovers that he no longer fits into the old pattern either. As a result, he then experiences a feeling of isolation.

Often when an African tries to adopt the European culture, he develops a hybrid of customary and western values. The product is not acceptable to either his tribal relatives, or to the European, who often scoffs at what he considers ridiculous aping. Although it would appear that there is no basic reluctance to accept many of the European norms, the African faces the problem of understanding and internalising a completely different set of norms.

A further explanation of African deviance can be found in the position which Africans occupy in urban society. On the whole, they constitute the financially lower classes, and Merton¹² found that the greatest pressures towards deviance are exerted on these classes. "Poverty causes crime, because the emphasis on material goals threatens the self-conception of persons who are 'relatively' unsuccessful in terms of wealth and income".¹³ There develops a feeling of rectitude in getting things by illegitimate means from the privileged. So when an African pauper steals from a European (who is generally presumed to be rich) African society does not generally condemn the thief. In fact he may be regarded as something of a hero. The attitude and reaction changes when the thief steals from one of his own race. A child brought up in this environment would most probably have his ability to distinguish between right and wrong affected in some way. Deviance in this respect would mean one thing to the European and another to the African.

Africans born in the urban townships are born into a community of uncertain values. The traditional values have largely broken down and new values have not been entirely internalised. Their environment is in many cases frustrating and they are likely to be exposed to criminalising influences. There has been considerable disintegration of family life on account of the system of migrant labour. Housing conditions and low wages do not permit husband and wife to live together. Prostitution, concubinage and promiscuity flourish. Children brought up under these conditions are likely to internalise values which society considers wrong. Contrast their environment with that of European children and it becomes readily apparent why the two will grow up with values which are poles apart.

Action to prevent widespread deviance will evidently be difficult in such circumstances. Since there is no universal agreement as to what constitutes deviance, many acts which one group would consider deviant will be considered normal by another group, and no universally accepted social sanction will be applied. Rule enforcement is not automatic and the administration of justice is susceptible to self-interest. The police in Rhodesia are likely to be more sympathetic towards the middle-class

12. Merton, *Social Theory and Social Structure* (enlarged ed.), pp. 185-214.

13. Jackson Toby, quoted by Wilkins, *Social Deviance* (1964 ed.), p.52.

European than to any other group, since they are there to support its values. Law enforcement officers are able to exercise fairly wide discretion with regard to arresting policy and the possibilities of racial prejudice cannot be ruled out. The result is that sanctions against deviance will be unevenly applied, and this in itself may be the cause of further deviance. Another problem relating to action against deviance arises due to the partial recognition of African customary law in this country. In the District Commissioner's courts and in the High Court, customary law is applied by common law procedure, while in the tribal courts, common law may be applied by customary procedure. There is a risk of injustice in this situation. For example, Harold Child¹⁴ mentions that under customary procedure, the accused was considered guilty until proven innocent.

In conclusion, it is evident that the concept of deviance presents great problems in Rhodesia's plural society. We face difficulties in deciding which acts should be considered deviant and in imposing sanctions against deviance. The very nature of our society, with the wide divergence of norms, is an important cause of deviance. The values of the minority are incorporated in the laws of the country, and although the majority would appear to be prepared to accept many of the imposed norms, the process of adaption is difficult. What is needed is a re-valuation of the nature of the problem. There can be no absolute solution, but compromise and understanding will go a long way towards achieving a single culture in Rhodesia.

14. Harold Child, *The History and Extent of Recognition of Tribal Law in Rhodesia*, p.3.



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